

REMARKS

In the Office Action, the Examiner rejected pending claims 1-50. By this paper, the Applicants added new dependent claims 51-55. These claims do not add any new matter, and are believed to clarify certain aspects of the independent claims 1 and 34. Applicants respectfully request reconsideration and allowance of all pending claims based on the following remarks.

Claim Rejections under 35 U.S.C. § 103(a)

The Examiner rejected claims 1-50 under 35 U.S.C. § 103(a) as being unpatentable over Erwin et al. (U.S. Patent No. 6,249,770 B1) (hereinafter Erwin). Applicants respectfully traverse this rejection.

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (PTO Bd. App. 1979). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the modification. *See ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). The mere fact that a references can be modified does not render the resultant modification obvious unless the prior art also suggests the desirability of the modification. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d. 1430 (Fed. Cir. 1990). Accordingly, to establish a *prima facie* case, the Examiner must not only show that the modified reference includes *all* of the claimed elements, but also a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the reference. *See Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985). The Examiner must provide objective evidence, rather than subjective belief and unknown authority, of the requisite motivation or suggestion to modify the cited reference. *In re Lee*, 61 U.S.P.Q.2d. 1430 (Fed. Cir. 2002).

Moreover, a statement that the proposed modification would have been “well within the ordinary skill of the art” based on individual knowledge of the claimed elements cannot be relied upon to establish a *prima facie* case of obviousness without some *objective reason to modify* the teachings of the reference. *See Ex parte Levengood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993); *In re Kotzab*, 217 F.3d 1365, 1371, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000); *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 U.S.P.Q.2d 1161 (Fed. Cir. 1999). Furthermore, when a prior art reference requires a selected modification to render obvious a subsequent invention, there must be some reason for the modification other than the hindsight gained from the invention itself, i.e., something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the modification. *See Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988).

Deficiencies of Examiner's Rejections

In one broad sweep, the Examiner rejected all pending claims 1-50 by characterizing the recitations of the claims as merely stating an intended use. The Examiner asserts, erroneously, “that a medical facility in simply an intended subject use of [the present] invention and the function or intended use described in [present] claims 1-50 can be applied to any facility or business operations, services, or products.” *See* Office Action Mailed October 8, 2004, page 2. Applicants respectfully, yet strongly, traverse these wholly unsupported rejections. The Examiner’s confusion as it relates to “intended use” may be based on a misapplication of case law pertaining to an intended use or purpose set forth in the preamble of a claim. *See Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 U.S.P.Q.2d 1161, 1165 (Fed. Cir. 1999). If the body of the claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention’s limitations, then the preamble is not considered a limitation and is of no significance to claim construction.” *Id.* However, even terms appearing in a preamble may be deemed

limitations when they “give meaning to the claim and properly define the invention.” *Gerber Garment Tech., Inc. v. Electra Sys., Inc.*, 916 F.2d 683, 688 (Fed. Cir. 1990); *see In re Paulsen*, 30 F.3d 1475, 1479 (Fed. Cir. 1994). In the present claims, the recitation of medical facility, healthcare facility, modalities, and so forth give meaning to the claims. Therefore, it is improper for the Examiner to dismiss these claim features without any form of objective evidence.

Applicants also emphasize that the Examiner’s rejections are vague regarding the various claim features. *See* 37 C.F.R. § 1.104(c)2; M.P.E.P. § 707.07 (directing that “[w]hen a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable” and that “[t]he pertinence of each reference, if not apparent, must be clearly explained in each rejected claim specified.”). The Examiner must meet the threshold burden of presenting a combination of references, or a modified reference, which teaches *all* of the features of a recited claim. Applicants respectfully assert that pure conjecture will not do. *See* M.P.E.P. § 706.

Moreover, the Applicants stress that the Examiner must address the specific elements of each and every claim in the present application. The Examiner’s statement that “[c]laims 2-18, 20-33, 35-42, and 44-50 are *rejected as being dependant upon* independent claims 1, 19, 34, and 43 which have been rejected” is completely improper. Office Action Mailed October 8, 2004, Page 2 (emphasis added). Each dependent claim recites additional features, which are not recited in the independent claims. Therefore, the Examiner’s statement is legally incorrect and does not meet the Examiner’s burden of presenting a *prima facie* case of obviousness. Given that the Examiner has not met his burden, the Applicants believe that the finality of the present Office Action is improper and should be withdrawn.

Moreover, “[e]verything of a personal nature must be avoided. Whatever may be the examiner’s view as to the utter lack of patentable merit in the disclosure of the application examined, he or she should not express in the record that the application is, or appears to be, devoid of patentable subject matter.” M.P.E.P. § 707.07(d) (emphasis added). Instead, the Examiner should identify any claims he judges to be allowable or to suggest in any way the rejected claims may be amended to make them allowable. *Id.* If the Examiner fails to do this, then it is understood that the Examiner is personally asserting there is “no allowable claim nor anything patentable in the subject matter to which the claims are directed.” *Id.*

As in the previous Response, Applicants request that the Examiner provide evidence to support the Examiner’s use of Official Notice. See Response to Office Action Mailed February 24, 2004, page 15. In view of the Examiner’s remarks, the Examiner has apparently taken Official Notice of facts outside of the record that the Examiner apparently believes are capable of demonstration as being “well-known” in the art. See M.P.E.P § 2144.03; Office Action Mailed February 24, 2004, page 2-3; Office Action Mailed October 8, 2004, pages 2-3. Again, in accordance with M.P.E.P. § 2144.03, Applicants traverse and challenge the Examiner’s use of Official Notice. See Amendment and Response to Office Action Mailed February 24, 2004, page 15. Furthermore, Applicants emphasize that the “well-known” facts asserted by the Examiner are not of a “notorious character” and are clearly not “capable of such instant and unquestionable demonstration as to defy dispute.” See M.P.E.P § 2144.03. Accordingly, Applicants respectfully requests that the Examiner produce evidence in support of the Examiner’s position as soon as practicable during prosecution and that the Examiner add a reference to the rejection in the next Official Action. If the Examiner finds such a reference and applies it in combination with the Erwin reference, Applicants further requests that the Examiner specifically identify the portion of the newly cited reference that discloses the allegedly “well known” elements of the recited claims, or withdraw the rejection.

In addition, the Applicants submit that the Examiner's use of Office Notice is improper on a legal basis, because the Office Notice is a broad sweeping statement as to all features of all pending claims. Section 2144.03 of the Manual of Patent Examining Procedure specifically states:

In **limited circumstances**, it is appropriate for an examiner to take office notice of facts not in the record or to rely on "common knowledge" in making a rejection, however such rejections should be **judiciously applied**.

...

Office notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "office notice" may be relied on, these **circumstances should be rare** when an application is under final rejection or action under 37 CFR 1.113.

...

As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "**capable of such instant and unquestionable demonstration as to defy dispute**" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

...

For example, assertions of technical facts in the areas of esoteric technology or **specific knowledge of the prior art must always be supported by citation to some reference work** recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21.

...

In re Eynde, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ("[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The **facts constituting the state of the art** are normally subject to the possibility of rational disagreement among reasonable men and are **not amenable to the taking of such notice.**").

...

Furthermore, as noted by the court in *Ahlert*, any facts so noticed should be of notorious character and **serve only to "fill in the gaps" in an insubstantial manner** which might exist in the evidentiary showing made by the examiner to support a particular ground for rejection.

M.P.E.P. (Rev. 2, May 2004) § 2144.03, Pages 2100-136-138. In view of these passages, the Applicants reiterate that the Examiner's use of Office Notice is improper and cannot

stand, because the scope of the Office Notice is far beyond an *insubstantial gap* in the Erwin reference. In fact, the Examiner appears to be rejecting the *entire claims* based on Office Notice. Moreover, the Examiner's Office Notice refers to the *general state of the art*, which the foregoing legal precedent clearly precludes.

Applicants further stress that the Erwin reference is missing certain features recited in the pending claims. The Erwin business forms, reports, and other techniques are strikingly different than the recited features of the present claims. *See, e.g.*, Erwin, col. 5, lines 20-37 and Figures 2-27. As discussed below, exemplary features recited in the present claims and not disclosed by Erwin include the *interfaces, forms, reports, client data, and financial analysis systems* which are *unique* to financial/client data of *medical facilities, healthcare facilities, modalities, healthcare procedures, healthcare categories, and so forth*. By way of example, it is not possible to utilize the Erwin forms, reports, and systems for financial analyses of sophisticated exemplary modalities, such as medical diagnostic and imaging systems (e.g., computed tomography (CT) systems, x-ray systems, magnetic resonance (MR) systems, positron emission tomography (PET) systems, ultrasound systems, nuclear medicine systems, and so forth). *See e.g.*, Erwin col. 1, lines 12-15, 25-30; col. 3, lines 30-34; and Specification, pages 2 and 5. As would be well understood by those skilled in the art, Erwin does not disclose the complex data and analyses of these exemplary modalities. Indeed, the Erwin reference is absolutely devoid of forms, reports, interfaces, financial analysis systems for evaluating medical facility data associated with such exemplary modalities.

Features of Independent Claim 1 Omitted from Erwin

Claim 1 recites "providing an electronic form having fields for entering *financial data of the medical facility associated with* at least one of a plurality of *modalities*." In claim 1, the type and content of the recited electronic form and fields are defined by and specifically configured for the receipt of medical facility data associated with a modality. In sharp contrast, the Erwin reference discloses input *forms* for typical financial data of a

business or company. *See* col. 5, lines 20-37. Erwin is completely devoid of *forms* or *fields* for entering financial data of a *medical facility associated with a modality*. *See, e.g.*, col. 5, lines 20-37. As appreciated by those skilled in the art, the types of the forms described in Erwin are clearly inappropriate for entering financial medical modality data. *See, e.g.*, Erwin, col. 5, lines 20-37 and Figures 2-27. Also, claim 1 recites more than an intended use because the claim features clearly include *electronic forms and fields specifically for medical facilities and modalities* in the body (not the preamble) of the claim. *See* Office Action Mailed October 8, 2004, page 2 (asserting erroneously that a medical facility is simply an intended subject use of [the present] invention and the function or intended use described in [present] claims 1-50 can applied to any facility or business operations, services, or products.”); *see also In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974) (explaining that all claim elements must be considered in evaluating patentability of the claim). Because the Erwin reference does not suggest or teach an *electronic form having fields appropriate for medical facility data associated with a modality*, independent claim 1 and its dependent claims are believed to be allowable over the cited reference.

Further, claim 1 recites “*financial data of the medical facility associated with . . . modalities, the financial data comprising projected changes . . . over a future analysis period . . . [and] generating a pro forma financial report for the future analysis period tailored to the financial data.*” In contrast, the Erwin *reports* are not suitable for financial data associated with specific modalities of medical facilities. Instead, the Erwin reference discloses *reports* that provide for the overall business-accounting evaluation of a company. *See, e.g.*, col. 1, lines 12-15, 25-30; col. 3, lines 30-34. Erwin produces “financial spreads and forecasts” for a company or entity based on “historic accounting data,” and does not generate a *report tailored to financial data associated with a modality or changes to a modality*. *See* col. 5, lines 39-44; col. 6, lines 49-64. As appreciated by those skilled in the art, the financial data of the medical facility associated with modalities (including projected changes) is incongruous with the Erwin data of common

operations of a general company. Without a doubt, Erwin does not teach a financial report based on analysis of financial data of a medical facility associated with a modality, much less a *pro forma financial report* based on analysis of projected changes associated with a medical modality. Accordingly, for these reasons as well, independent claim 1 and its dependent claims are believed to be allowable over the cited reference.

Applicants re-emphasize that the nature of the *electronic forms, fields, and financial reports* defined in claim 1 are not a well-known process or an intended use as suggested by the Examiner. See Office Action Mailed October 8, 2004, page 2. Rather, the recitations of claim 1 relate to specific configurations not disclosed by the Erwin reference. In general, the Applicants believe each of each of the present claims is structurally distinct from the Erwin features and would be recognized as such by one of ordinary skill in the art.

Features of Independent Claim 19 Omitted from Erwin

Claim 19 recites “an interface configured to exchange *client data* with the financial analysis system, the *client data comprising financial data relating to the medical facility*, and wherein the financial analysis system is configured to evaluate the client data and to generate a projected financial report for the medical facility *tailored to the client data*.” In stark contrast, the Erwin reference is absolutely devoid of an interface configured to accommodate *client data* comprising financial data related to a *medical facility*. Similarly, Erwin is devoid of a financial report tailored to such data. See, generally col. 4, line 42 – col. 14, line 58; and Figures 1-27. The cited reference clearly fails to disclose techniques for evaluating client data associated with a medical facility. The Erwin systems are incompatible with specific financial data (e.g., variable and fixed costs, revenues, deductions, etc.) of *medical* institutions. The types of *interfaces* and *financial reports* recited in claim 19 are clearly configured for *evaluating client data of a medical facility*, and are not a simple representation of applying the generic business accounting techniques disclosed in Erwin to a medical facility. See Office Action Mailed

October 8, 2004, page 2 (asserting erroneously that a medical facility in simply an intended subject use of [the present] invention). Rather, the claimed *interface* and *financial report* denotes types of interfaces and financial reports that are different than any interface or report described in the Erwin reference. *See, e.g., In re Bulloch and Kim*, 203 U.S.P.Q. 171, 174 (CCPA 1979) (holding that the claim language “stable color developer concentrate” is more than a mere statement of purpose). In sum, the *reports* and *interfaces* disclosed in Erwin are not suitable for exchanging, analyzing, and reporting financial and client data associated with medical facilities. *See, e.g.,* col. 5, lines 39-44; col. 6, lines 49-64; Figures 2-27. Accordingly, for at least these reasons, independent claim 19 and its dependent claims are believed to be allowable over the Erwin reference.

Features of Independent Claim 34 Omitted from Erwin

Claim 34 recites “providing an interface having a form for entering *client data* relating to the healthcare facility, wherein the client data comprises a healthcare category and financial data including projected *changes* in at least a portion of the financial data; financially analyzing and projecting at least a portion of the financial data over a future outlook period . . . and returning a pro forma financial report to a client.” Conversely, the Erwin reference does not teach, suggest, or disclose a *form* for entering of client data related to a healthcare facility and healthcare category, nor a *financial report* of the financial analysis of such data. Instead, as discussed, Erwin provides for forms and reports for “financial spreading and forecasting which highlights the operating profitability and cash-flow generating ability of a company’s operations.” Col. 1, lines 33-37. The Erwin system displays the financial forecast for the user, and the user assesses the operating profitability and cash flow-generating capability of the entity or company based on the financial forecast. Col. 3, lines 30-34; col. 5, lines 39-44. A further emphasis in Erwin is global forecasting assumptions. Col. 11, line 12 – col. 12, line 60. Erwin simply does not disclose forms or financial reports configured to financially analyzing healthcare category data including projected changes. Therefore,

for at least these reasons, independent claim 34 and its dependent claims are believed to be allowable over the Erwin reference.

In addition, in response to the Examiner's assertion regarding "intended use," the Applicants reiterate that the *forms* or *financial reports* for financially analyzing *healthcare category* data are recited in the body (not the preamble) of independent claim 34, such that these claim recitations give meaning and define the scope of the claimed subject matter. For example, the recited features of "healthcare facility" and "healthcare category data" associated with the *forms* and *financial reports* are recited in the *body* of claim 34, and thus define boundaries of the claimed subject matter of *specific forms and reports* not disclosed by the Erwin reference. These claim features must be considered by the Examiner in formulating a rejection of claim 34. *See Ex parte Clapp*, 227 U.S.P.Q. at 972 (explaining that to establish a *prima facie* case of obviousness, the Examiner must show that the modified reference includes *all* of the claimed elements). It is clear that no forms or financial reports in the Erwin reference read on the claim elements of claim 34. *See, e.g.*, col. 5, lines 39-44; col. 6, lines 49-64; Figures 2-27. Further, the Examiner's vague modification of Erwin fails to reach these elements of claim 34. *See* Office Action Mailed October 8, 2004, pages 2-3

Features of Independent Claim 43 Omitted from Erwin

Claim 43 recites "an *Internet query form* having a plurality of data entry *fields* configured for accepting financial data of the *healthcare facility* . . . and *having a healthcare procedure field* for entering a revenue statistic of a *healthcare procedure*; and an *Internet results page* for displaying a projected financial statistic from the *financial analysis system*." In contrast, Erwin does not teach, suggest, or disclose a *form* having data entry *fields* accepting financial data of a health care facility, nor a healthcare procedure field in such a form. Furthermore, Erwin clearly does not disclose a *system* for financially analyzing a healthcare facility or healthcare procedure. Thus, Erwin can not teach the related *Internet results page*. Again, Erwin is instead directed to "manipulating

historic accounting data and producing financial spreads and forecasts” for a generic company or entity with *no mention of a healthcare facility or specific healthcare procedure*. See, e.g., col. 1, lines 12-15. Further, the Erwin reference, as improperly and unclearly modified by the Examiner, does not disclose these features, such as a *system* for financially analyzing a healthcare facility or procedure. See Office Action Mailed October 8, 2004, pages 2-3. For these reasons, independent claim 43 and its dependent claims are believed to be allowable over the Erwin reference.

No Reason to Modify Erwin – Lack of Objective Evidence

The Examiner has not shown the requisite motivation or suggestion to modify the Erwin reference to reach the presently claimed technique. The Examiner must provide objective evidence, rather than subjective belief and unknown authority, of the requisite motivation or suggestion to combine or modify the cited references. *In re Lee*, 61 U.S.P.Q.2d. 1430 (Fed. Cir. 2002). In the present rejection, the Examiner acknowledges that Erwin does not teach a medical facility, as presently claimed. Paper 3, page 2. However, the Examiner is apparently modifying Erwin in an effort to reach the presently claimed features by characterizing the present application with the following *conclusory and subjective statement* that a “medical facility is simply an intended use” of the present invention, and that “features” of the present claims “can be found” in the art. See Paper 06192004, pages 2-3. Applicants respectfully, but emphatically, assert that the Examiner has not met the evidentiary requirements, i.e., objective evidence, for the requisite motivation or suggestion to modify the cited reference to include a medical facility or healthcare facility, or to include the reports, forms, interfaces, financial analysis systems, and so on, associated with a medical facility, healthcare category, or modality.

The Examiner simply has not explained, much less provided objective evidence, as to how to modify Erwin to accommodate the unique requirements associated with the medical field. For example, the Examiner has not described how Erwin might accommodate the financial analyses of a *medical facility, medical resource, or modality*,

as claimed. Further, the Examiner has not even addressed as how to modify Erwin to accommodate the financial analysis of a *projected changes* associated with generic device or system data, in general, much less with *projected changes associated with a specific medical modality data*. Similarly, the Examiner has not addressed how to modify Erwin to accommodate the financial analysis of a *specific transaction* (rather than general company operations), much less a specific transaction associated with a medical resource or modality, as claimed. Accordingly, for at least these reasons, Applicants again challenge the Examiner to produce *objective evidence* of the requisite motivation or suggestion to modify the Erwin reference. See Response to Office Action mailed July 1, 2004. In the alternative, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 103.

Applicants Request Withdrawal of the Rejection Under 35 U.S.C. § 103

The Examiner has failed to support the foregoing rejection. For example, as discussed above, the Erwin reference fails to teach, suggest, or disclose the recited features of the independent claims 1, 19, 34, and 43. Further, the Examiner has not provided objective evidence for the proposed modification of the Erwin reference. Accordingly, for at least these reason, claims 1, 19, 34, and 43, and the claims that depend thereon are believed allowable over the Erwin reference. Therefore, Applicants respectfully request withdrawal of the Examiner's rejection of claims 1-50.

Dependent Claims 2-18

Applicants emphasize that the dependent claims are also patentable over the Erwin reference by virtue of the subject matter they separately recite. For example, features recited in claims depending from claim 1 include the *electronic form* having *fields* allowing the client to “select a desired *healthcare* category” or to “select a desired *medical* system,” or for the “*data entry*” of a fixed or variable operating cost “of a *medical* facility,” “a wage statistic” or “indirect labor statistic” for “employees of the *medical* facility,” and a “tax statistic for the *medical* facility.” Other features recited in the dependent claims and

not taught by Erwin include an *electronic form* having *fields* for data entry of “*medical supply cost*” or “*overhead cost*” of “*the medical facility*,” a “*medical procedure volume per time*,” “*service charge per medical procedure provided by the medical facility*,” and for “a financing amount, interest rate and financing period for *financed medical resource* for the medical facility.” The Erwin reference does not teach, suggest, or disclose these features.

Dependent Claims 20-33

Claims depending from claim 19 also include subject matter believed patentable over the Erwin reference, reciting an *interface* having similar features listed above in the discussion of claims 2-18. Further examples include claim 25 which recites wherein “the interface comprises a *data entry field* for a desired *healthcare category*, and dependent claim 26 which recites “wherein the interface comprises a *data entry field* for a desired *medical system associated with* at least one of a plurality of *modalities*.” Moreover, dependent claim 22, recites “wherein the *financial analysis system* comprises a *healthcare module* having *rules* for financially evaluating operations of a *healthcare provider*, such as the medical facility.” Again, the Erwin reference is absolutely devoid of such claim elements.

Dependent Claims 35-42 and 44-50

Claims depending from claim 34, recite providing an *interface* having *fields* for data entry of similar features listed above. Similarly, claims depending from claim 43, recite an *Internet query form* having data entry fields also configured for similar features listed above. Another example includes dependent claim 36 which recites “comprising *tailoring the form* to the *healthcare category*, wherein the healthcare category is associated with at least one of a plurality of *modalities*.” The Erwin reference simply does not teach, suggest, or disclose these structural features.

Withdrawal of Rejection of Dependent Claims

Accordingly, for these additional reasons, Applicants respect withdrawal of the Examiner's rejection of the dependent claims.

The Examiner's Failure to Address the Dependent Claims

In the rejection, the Examiner stated that "[c]laims 2-18, 20-33, 35-42, and 44-50 are rejected as being dependent upon independent claims 1, 19, 34, and 43 which have been rejected." However, once again, Applicants stress that the Examiner's reasoning is incorrect. *See* Amendment and Response to Office Action Mailed February 24, 2004. In other words, the Examiner cannot reject a dependent claim under Section 103 based solely on the subject matter of the independent claim. Instead, the Examiner must address the subject matter of a dependent claim to reject that dependent claim under Section 103. Indeed, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974); M.P.E.P. § 2144.03. Here, the Examiner fails to even address the subject matter of a single dependent claim. Accordingly, for at least this reason, Applicants again traverse these unsupported rejections of the dependent claims. *See* Amendment and Response to Office Action Mailed February 24, 2004. Applicants remind the Examiner that "[i]n order to provide a complete application file history and to enhance the clarity of the prosecution history record, an examiner *must* provide clear explanations by all actions taken by the examiner during prosecution of an application." M.P.E.P. § 707.07(d) (emphasis added). Furthermore "[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it." M.P.E.P. § 707.07(d). Moreover, Applicants respectfully remind the Examiner that he should never overlook the importance of his role in allowing claims which properly define the invention. C.F.R. § 1.104; M.P.E.P. § 706.

New Claims

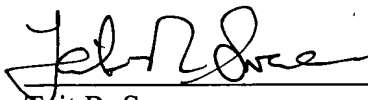
As noted above, the Applicants added new dependent claims 51-55. Applicants stress that these new dependent claims 51-55 recite additional features, which are clearly missing from the cited reference. For these reasons, the Applicants believe that these claims are currently in condition for allowance.

Conclusion

The Applicants respectfully submit that all pending claims 1-50 and the new claims 51-55 should be in condition for allowance. However, if the Examiner believes certain amendments are necessary to clarify the present claims or if the Examiner wishes to resolve any other issues by way of a telephone conference, the Examiner is kindly invited to contact the undersigned attorney at the telephone number indicated below.

Respectfully submitted,

Date: December 7, 2004


Tait R. Swanson
Registration No. 48,226
FLETCHER YODER
P.O. Box 692289
Houston, TX 77269-2289
(281) 970-4545